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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/518,244

12/16/2004

Kazuya Sugimura

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10/24/2006

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EXAMINER

SIPOS, JOHN

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 10/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/518,244

Applicant(s)

SUGIMURA ET AL.

Examiner

John Sipos

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS

Claims 1-16 are rejected under **35 U.S.C. ' 112, second paragraph**, as being **indefinite** for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no proper antecedence in the claims for “the portion” of the packaging material or for “the next packaged bag”. Note that claims 1 and 9 do not set forth apparatus that form more than one bag.

Clarification of the last paragraphs of the independent claims is also requested. Since the transverse sealers move in a circle, and as can be seen in Figures 1 and 5 the sealers closely approach the dispersing mouth of the dispersing means, the mixing does not seem to take place “prior” to the articles entering the tube material that will form the “next” bag but rather the mixing will take place after entering the portion of the tube that is forming the next bag. Also, applicants are requested to specifically point out where is there support for this paragraph in the specification.

Applicants’ arguments have been considered but are not persuasive and therefore the rejections on prior art made in the last Office action are repeated.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

Claims 1,9 and 11 are rejected under **35 U.S.C. ' 102(e)** as being anticipated by the publication to Engesser (6,904,737). The Engesser publication shows a packaging system comprising a former 10 for forming a film into a tube, longitudinal sealing means 11, transverse sealers 12 and dispersing tubes 1,6... for filling the formed film tube with different materials with the mouth of the dispersing tubes being positioned in the film tube. The specific product being placed in the film tube is given little patentable weight in apparatus claims since it is the structure that is being positively claimed. Note that the object of the Engesser publication is to mix the diverse product materials during the packaging operation rather than have the materials premixed (see column 1, lines 13 et seq. and line 61 et seq.).

Claims 1,9 and 11 are rejected under **35 U.S.C. ' 102(b)** as being anticipated by the patent to Davis (4,769,974). The Davis patent shows a packaging system comprising a former for forming a film into a tube, longitudinal sealing means 26,28, transverse sealers 32,34 and dispersing tubes 64,66,82,84,86,94,96 for filling the formed film tube with different materials including a gas with the mouth of the dispersing tubes being positioned in the film tube. The specific product being placed in the film tube is given little patentable weight in apparatus claims since it is the structure that is being positively claimed. Regarding claim 4, note that the product fill tubes 64,66 join gas fill tubes 94,96 with a single dispersing mouth.

Claims 1,3,5,9,11 and 13 are rejected under **35 U.S.C. ' 102(e)** as being anticipated by the publication to Rosenberg (3,719,021). The Rosenberg patent shows a packaging system comprising a former 41 for forming a film into a tube, longitudinal sealing means 46, transverse sealers 27 and dispersing tubes 43 for filling the formed film tube with different materials and gas tubes 44 for feeding a gas into the formed film tube. The dispersing and the gas tubes are

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vertically movable by air cylinder 45 into and out of the film tube and similarly the transverse sealers are vertically movable (see column 2, line 16 et seq.) to seal the film tube during their vertical movement. The specific product being placed in the film tube is given little patentable weight in apparatus claims since it is the structure that is being positively claimed (note lines 1-5 in column 7).

The following is a quotation of 35 U.S.C. ' 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2,6-8,10 and 14-16 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over Engesser (6,904,737) or Davis (4,769,974) or Rosenberg (3,719,021) in view of the admitted prior art (APA).

The use of electrical charging means to disperse materials (claims 2 and 10), continuous filling mechanisms (claims 6,7,14 and 15) and shaking means (claims 8 and 16) are well known in the art and Examiner takes Official notice that these features are well known in the packaging art. It would have been obvious to one skilled in the art to provide the machine of Engesser or Davis or Rosenberg with the above features for their inherent advantages. For example, electrostatic charge aides in the dispersion and adhesion of the product, continuous filling increases the efficiency of the machine and shaking aides in the dispersing of the product.

As was stated in the last Office action, the examiner considers these features well known and took Official Notice of the above elements. In view of these assertions made by the Examiner in the last Office action and Applicants silence regarding them, these features are considered as an admission of prior art.

Claims 4 and 12 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over Engesser (6,904,737) or Davis (4,769,974) in view of Rauser (3,912,535). The patent to Rauser shows packaging system in which a film is formed into a tube 1 comprising a single filling tube 4 that is selectively connected to a source of the filling product or a source of gas for filling the film tube. It would have been obvious to one skilled in the art to feed a gas and the product into the package of Engesser or Davis through a single pipe as taught by Rauser to reduce the number of filling pipes extending into the film tube.

Claims 3,5,11 and 13 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over Engesser (6,904,737) or Davis (4,769,974) in view of Rosenberg (3,719,021). It would have been obvious to one skilled in the art to provide the Engesser or Davis devices with vertically movable filling pipes to allow the removal of the filling pipe from the film tube and with vertically movable transverse sealers to allow the sealing of the film tube while the film tube is advancing as shown by Rosenbeg.

RESPONSE TO APPLICANT'S ARGUMENTS

Applicants' arguments with respect to the claims have been considered but are not persuasive.

Applicants' main argument is that the dispersing and the formation of the seasoned/mixed articles are formed "prior" to the seasoned/mixed articles entering the film material "that will form the next" bag. All three basic references show this later phrase in that the dispersing mouth of the dispersing means ends above the transverse sealing means and therefore the mixing of the two products occurs prior to forming the top seal, i.e. prior the formation of the next bag. Note that this later phrase is not defined in the claims.

It should also be noted that the last paragraph of the independent claims recites no structure and that the recited relationship of the location of the dispersing mouth relative the next bag depend merely on the size of the bag to be sealed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

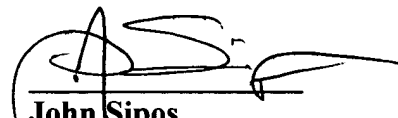
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **571-272-4468**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for U.S. Patent and Trademark Office is **(571) 273-8300**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at **571-272-4467**.



John Sipos
Primary Examiner
Art Unit 3721